

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 2301

March 18, 2014

SUMMARY OF BILL: Broadens the DUI offenses of operating an aircraft under the influence and boating under the influence by permitting proof of intoxication through saliva, not just breath, blood, and urine.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures – \$12,100/One-Time
\$182,200/Recurring
\$158,600/Incarceration***

Increase Local Expenditures – \$866,700/Incarceration**

Assumptions:

- It is assumed that the proposed legislation will result in a five percent increase in DUI convictions.
- According to the Department of Safety and Homeland Security, the following averages exist for DUI offenses:
 - 1st Offense – 14,098.4 per year
 - 2nd Offense – 2,673.2 per year
 - 3rd Offense – 843.6 per year
 - Unspecified Offense – 4,478 per year
- It is assumed that the unspecified offenses are all first offenses, resulting in an average of 18,576.4 first offense convictions per year.
- It is assumed that the proposed legislation will result in an additional 928.82 first offense convictions per year $[(14,098.4 + 4,478) \times .05]$. A first offense conviction requires a mandatory 48 hours of incarceration if the offender's blood alcohol content was under 0.20 and a mandatory seven day incarceration if the offender's blood alcohol content was over 0.20.
- It is assumed that 80 percent (743.06 offenders) of the first offenders had a blood alcohol content under 0.20 and that 20 percent (185.76 offenders) had a blood alcohol content over 0.20.
- The estimated 2014 cost per inmate per day for local jails is \$62.52.
- The proposed legislation will result in 743.06 additional first offenders each year serving 48 hours (2 days). The proposed legislation will increase local expenditures by \$92,912.22 (743.06 offenders x 2 days x \$62.52).

- The proposed legislation will result in 185.76 additional first offenders each year serving 7 days. The proposed legislation will increase local expenditures by \$81,296.01 ($185.76 \text{ offenders} \times 7 \text{ days} \times \62.52).
- A second offense DUI requires 45 days incarceration. The proposed legislation will result in 133.66 ($2,673.2 \times .05$) additional second offenses each year.
- The proposed legislation will increase local expenditures by \$376,039.04 ($133.66 \text{ offenders} \times 45 \text{ days} \times \62.52).
- A third offense DUI requires 120 days incarceration. The proposed legislation will result in 42.18 ($843.6 \times .05$) additional third offenses each year.
- The proposed legislation will increase local expenditures by \$316,451.23 ($42.18 \text{ offenders} \times 120 \text{ days} \times \62.52).
- The total increase in local expenditures is \$866,698.50.
- A fourth offense DUI is punished as a Class E felony.
- According to the Department of Correction (DOC), there has been an average of 149.5 admissions per year for fourth offense DUI over the last 10 years. The proposed legislation will result in an additional 7.48 ($149.5 \times .05$) fourth offenses each year.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one ($7.48 \times .1178$) additional admissions for a total of 8 ($7 + 1$).
- According to the DOC, 32.03 percent of offenders will re-offend within three years of their release. A recidivism discount of 32.03 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($8 \text{ offenders} \times .3203 = 2.56 \text{ offenders}$).
- The average time served for a Class E felony is 1.31 years.
- According to the DOC, the average operating cost per offender per day for calendar year 2014 is \$66.29.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on five additional offenders [$8 \text{ offenders} - 3 \text{ (recidivism discount)}$] serving 1.31 years (478.48 days) for a total of \$31,718.44 ($\$66.29 \times 478.48 \text{ days}$). The cost for five offenders is \$158,592.20 ($\$31,718.44 \times 5$).
- The substantial increase in DUI offenses that will result from the proposed legislation will require one additional assistant district attorney and one assistant public defender.
- It is assumed that the assistant district attorney (ADA) will be hired at an ADA level 5 with a salary of \$58,740. The new position will increase expenditures by \$82,993.01 [$\$58,740 + (\$58,740 \times .2287) \text{ benefits} + (\$58,740 \times .0765) \text{ FICA} + \$6,325.56 \text{ insurance}$].
- According to the District Attorneys General Conference, the new ADA will require recurring expenditures totaling \$10,450 ($\$2,700 \text{ travel} + \$100 \text{ printing} + \$1,200 \text{ utilities} + \$500 \text{ shipping} + \$500 \text{ professional services} + \$500 \text{ supplies} + \$4,500 \text{ rentals} + \$400 \text{ unclassified} + \$50 \text{ interagency charges}$) and a one-time expenditure of \$4,400 for equipment.
- It is assumed that the assistant public defender (PD) will be hired at a salary of \$56,800.

The new position will increase expenditures by \$76,007.80 [$\$56,800 + (\$56,800 \times .1503)$ benefits + $(\$56,800 \times .0765)$ FICA + \$6,325.56 insurance].

- According to the District Public Defenders Conference, the new PD will require recurring expenditures totaling \$12,700 (\$4,800 travel + \$400 legal research services + \$1,000 office supplies + \$4,800 rent + \$400 professional privilege tax + \$300 training + \$100 data processing equipment + \$900 phone/internet) and one-time expenditures totaling \$7,700 (\$400 legal research services + \$2,400 furniture + \$4,400 data processing equipment + \$500 phone/internet).
- The total increase in recurring state expenditures is \$182,150.81 ($\$82,993.01 + \$10,450 + \$76,007.80 + \$12,700$).
- The total increase in one-time state expenditures is \$12,100 ($\$4,400 + \$7,700$).

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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